

TITLE 329 SOLID WASTE MANAGEMENT BOARD**LSA Document #09-365****SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE SECOND PUBLIC HEARING**

On July 17, 2012, the solid waste management board (board) conducted the second public hearing/board meeting concerning the development of new rules at 329 IAC 3.1-11.1 and amendments to 329 IAC 3.1-11-2. Comments were made by the following parties:

Gerard Manley, Quemetco Incorporated (GM)
Robert Kelsey, Quemetco Incorporated (RK)

Following is a summary of the comments received and IDEM's responses thereto.

Comment: While Quemetco has worked closely with IDEM throughout this rulemaking process, significant concerns remain that warrant your consideration. (GM)

Response: IDEM has made revisions in the rule to address Quemetco's concerns, clarify requirements, and to simplify the rule.

Comment: This proposed rulemaking pertains to the storage of lead acid batteries prior to reclamation, which IDEM describes as intermediate storage. Quemetco supports IDEM's efforts to regulate this activity and the proposed rule language regarding this effort. However, IDEM also has pursued regulating of raw material and the manufacturing process in this same rulemaking. IDEM's effort to regulate the intermittent storage of partially reclaimed materials and defining partially reclaimed materials as a hazardous waste runs counter to the historically accepted position that battery components are a commodity traded on the open markets, that the secondary lead smelting process is a manufacturing process, that EPA has never considered battery component as solid waste, and has always considered the secondary lead smelting process exempt from regulation. 40 CFR 266 Subpart G specifically addresses spent lead acid batteries and provides that they are not regulated. (GM)

Response: EPA specifically regulates the storage of partially reclaimed materials (lead plates and groups) through its containment building regulation, which became effective in 1992. IDEM has proposed to delete 329 IAC 3.1-11.1-5(d) of the preliminarily adopted rule that listed standards for intermittent storage during reclamation of partially reclaimed wastes. Instead, under section 5(c), IDEM is requiring compliance with the generator and storage requirements of specified federal regulations from which the listed standards had originated. IDEM's reasoning and authority is more fully described in its Position document, which has been made available to Quemetco and members of the board. EPA's containment building regulation became effective after the Board's 1991 decision

Comment: This board, ruled on this issue in 1991 and confirmed the history stated above. The board ruled that the battery record process produces sized and homogenous lead-bearing materials

for smelting; that there was an active commodity market for lead acid plates; that no battery component ever touched the earth or was placed into the waters of the State before being reclaimed, and the board ruled that no battery was discarded, abandoned or thrown away by Quemetco. The board then concluded, and should continue to conclude today, that the recovered battery components are neither solid nor hazardous wastes subject to regulation. (GM)

Response: The federal regulation upon which the current rule is based became effective after the 1991 decision by this board.

Comment: Even if partially reclaimed materials are solid waste, which they are not, the rule cannot regulate intermittent storage of them, because such storage is part of a manufacturing process, or if the recycling process is exempt from hazardous waste regulations. (GM)

Response: The federal regulation upon which the current rule is based became effective after the 1991 decision by this board.

Comment: IDEM has failed to provide a rational basis for regulating partially reclaimed material; IDEM has failed to provide a rational basis for regulating intermittent storage; IDEM has failed to follow the rulemaking procedures in Indiana Code 13-14-9 throughout. (GM)

Response: EPA specifically regulates the storage of partially reclaimed materials (lead plates and groups) through its containment building regulation, which became effective in 1992. IDEM has proposed to delete 329 IAC 3.1-11.1- 5(d) of the preliminarily adopted rule that listed standards for intermittent storage during reclamation of partially reclaimed wastes. Instead, under section 5(c), IDEM is requiring compliance with the generator and storage requirements of specified federal regulations from which the listed standards had originated. IDEM believes the requirements of the IDEM rulemaking process under IC 13-14-9 have been followed and in fact, IDEM has gone beyond the statutory requirements seeking input on this particular rulemaking.

Comment: In the Board packet on the website that describes the differences in the proposed rulemaking as preliminarily adopted and the final rule under consideration, there appear to be many changes not reflected in what is in the Board packet. Based on my review, the red line doesn't represent all of the changes that are in the final proposed rule. (GM)

Response: This comment was based on the materials provided to the board at the initial final adoption hearing in July, 2012. The materials for this second final adoption hearing and proposed board action contain all of IDEM's suggested changes on a separate change sheet as well as a copy of the preliminarily adopted rule with the suggested changes incorporated to allow the reader to see the changes in the context of the entire rule.

Comment: Quemetco requests that if the Board elects to adopt 329 IAC 3.1-11.2, it delete 329 IAC 3.1-11.1-2(f), 329 IAC 3.1-11.1-2(i), 329 IAC 3.1-11.1-5(d), 329 IAC 3.1-11.1-5(e), 329 IAC 3.1-11.1-7. (GM)

Response: As the rule is currently proposed for final adoption, 329 IAC 3.1-11.1-2(f) has been deleted, and 2(i) amended. 329 IAC 3.1-11.1- 5(d) and 5 (e) have been deleted, and 329

IAC3.1-11.1- 7 has been amended to reference compliance with additional applicable federal regulations.

Comment: Section 329 IAC 3.1-11.1-1(a) of the rule needs to include battery manufacturers as an item (6) that reads “Manufacturers as defined in Indiana Code 13-11-2-126(a),” since we understand that they also have intermittent storage. (RK)

Response: The rule is not applicable to manufacturers (see 329 IAC 3.1- 11.1-1) and IDEM has deleted 'intermittent storage' from the rule.

Comment: Section 329 IAC 3.1-11.1-2 “Definitions,” remove the word “whole” as used in the definition of “Reclamation process,” since not all batteries are whole when they are received for reclamation. (RK)

Response: IDEM agrees and has proposed the change to the rule proposed for final adoption.

Comment: For section 329 IAC 3.1-11.1-4(1)(f)(i) and 329 IAC 3.1-11.1-4(2)(g)(i), delete item (i) that requires any spent lead acid battery being discarded be sent to a RCRA permitted reclamation facility, since according to 40 CFR 261.6(c)(1), the battery reclamation process is exempt from permitting. Currently the only RCRA permitting that is required for a reclamation facility is when the batteries are stored at one site before they're put into the process. Quemetco suggests that IDEM use the language based on Indiana Code 13-20-16-6, such as a facility operated as a secondary lead smelter under a valid permit issued by the department, the U.S. EPA, or under a state program approved or authorized by U.S. EPA. (RK)

Response: RCRA permitting is also required under the federal containment building regulation, which became effective in 1992. Sending a discarded spent lead acid battery to a RCRA permitted reclamation facility is one alternative provided under sec. 4(6) in the rule for discarding spent lead acid batteries.

Comment: In 329 IAC 3.1-11.1-5(d), the phrase in the first sentence that reads, “that complete the reclamation process on-site” is confusing, it is not used anywhere else in the reclamation section, and therefore we suggest it be deleted. (RK)

Response: In the rule as proposed for final adoption, 329 IAC 3.1-11.1-5(d) has been deleted.

Comment: If the Board elects to adopt the rule as presented, then under section 5(d)(3) it is not feasible and unreasonable to inspect the base at the frequency the agency is asking for. The partially reclaimed material, specifically lead battery material that covers the base, is not even stored, but it is being allowed to have the liquids and acid drain, which is also known as work in progress, so it can dry further in the drying kiln before it goes to the next step in the recycling process, which is the smelting units. Regarding the concrete base that is uncoated, like the one at Quemetco, the agency needs to revise the rule to exempt a facility that has a leak detection system for liquids from the daily and weekly inspection requirements of the base, whether coated or not. Any significant cracks will result in liquids collected and showing up in the liquid collection system. Having a six-month inspection interval for facilities having a leak detection system allows

for flexibility to conduct a more thorough inspection when the smelting process is down than trying to perform a daily or a weekly inspection looking for significant cracks when you've got piles of lead battery material, or partially reclaimed material, in the way of inspecting the base. (RK)

Response: In the rule as proposed for final adoption, 329 IAC 3.1-11.1-5(d) has been deleted.

Comment: If the board elects to adopt the rule as presented, then under section (5)(B)(7), IDEM needs to exempt facilities from controlling fugitive lead emissions in accordance with 40 CFR 265.110 (c)(1)(vi) or (iv) that maintain the lead-containing materials and/or partially reclaimed materials in a building/enclosure maintained under negative pressure. Secondary lead smelters have been required since 1997 by the federal and state NESHAP fair rules to maintain their operational areas under negative pressure to prevent exactly that, fugitive lead dust released to the plant. (RK)

Response: In the rule as proposed for final adoption, this requirement has been eliminated.